

JS 44 (Rev. 12/07) (and rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS CAROLYN GLAZINER, et al.		DEFENDANTS ORTHO-MCNEIL PHARMACEUTICAL, INC., et al.	
(b) County of Residence of First Listed Plaintiff Terra Haute, IN (EXCEPT IN U.S. PLAINTIFF CASES)		County of Residence of First Listed Defendant Raritan, NJ (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.	
(c) Attorney's (Firm Name, Address, and Telephone Number) Shaw Khorrami, Esq. (213) 596-6000 Dylan Pollard, Esq. Khorrami, Pollard & Abir, LLP 44 S. Flower Street, 33rd Floor, Los Angeles, CA 90071		Attorneys (If Known) Charles F. Preuss, Esq. (415) 591-7500 Hillary S. Weiner, Esq. Drinker Biddle & Reath LLP 50 Fremont Street, 20th Floor, San Francisco, CA 94105	

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. Section 1332

Brief description of cause

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 75,000+

 CHECK YES only if demanded in complaint
JURY DEMAND: ☒ Yes ☐ No
VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASES".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)☒ SAN FRANCISCO/OAKLAND☐ SAN JOSE

DATE

April 16, 2008

SIGNATURE OF ATTORNEY OF RECORD

Hillary S. Weiner

ORIGINAL

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known as ORTHO-McNEIL-JANSSEN
PHARMACEUTICALS, INC.,
and MCKESSON CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

CAROLYN GLAZINER, an individual;

Plaintiff,

v.

ORTHO-MCNEIL PHARMACEUTICAL,
INC., a Delaware Corporation;
MCKESSON CORP. and DOES 1-500,
inclusive,

Defendants.

Case No.

**NOTICE OF REMOVAL AND
REMOVAL OF ACTION UNDER 28
U.S.C. § 1441(B) [DIVERSITY]**

TO THE CLERK OF THE COURT:

Defendant Ortho-McNeil Pharmaceutical, Inc. ("OMP"), now known as Ortho-McNeil-Janssen Pharmaceuticals, Inc. ("OMJPI"), removes to this Court the state court action described below, based on diversity of citizenship, pursuant to 28 U.S.C. §§ 1332, 1441(b). As detailed here, the Court should disregard the forum defendant rule because California resident defendant McKesson Corporation ("McKesson") was fraudulently joined.

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BACKGROUND

1. On November 15, 2007, the Southern California law firms of Khorrami, Pollard & Abir, LLP and Kabateck Brown Kellner LLP, along with the Colorado law firm of Burg Simpson Eldredge Hersh Jardine PC, filed a Complaint in a personal injury action in the Superior Court of California, County of San Francisco, entitled Carolyn Glaziner. v. Ortho-McNeil Pharmaceutical, Inc., McKesson Corp., and Does 1-500, inclusive, Case Number CGC-07-469227. A copy of the Complaint in that San Francisco County state court action (the “Complaint”) is attached as Exhibit A to the accompanying Declaration of Hillary S. Weiner (“Weiner Dec.”).

The plaintiff in the action is a resident of Terre Haute, Indiana, who seeks damages for “potentially fatal side effects” she allegedly suffered from using the Ortho Evra® contraceptive patch, available only by prescription and manufactured by OMP, now known as OMJPI. (Complaint ¶¶ 1-2 and 10.) Plaintiff alleges causes of action for Negligence, Strict Liability Failure to Warn, Breach of Express Warranty, Breach of Implied Warranty, Negligent Misrepresentation, and Fraud against OMP, a Delaware corporation with its principal place of business in New Jersey, now known as OMJPI, a Pennsylvania corporation, also with its principal place of business in New Jersey. (Complaint ¶ 11; Weiner Dec. ¶ 3.) Although devoid of any factual allegations against McKesson, plaintiff’s Complaint asserts those same claims against McKesson, a Delaware corporation with its principal place of business in San Francisco, California, whom plaintiff – a resident of Indiana – alleges “distributed and sold Ortho Evra in and throughout the State of California.” (Complaint ¶¶ 3, 16; Declaration of Greg Yonko, filed in *Abel, Theresa, et al. v. Ortho-McNeil Pharmaceutical, Inc., et al.*, USDC ND CA Case No. C 06 7551 SBA (“Yonko Dec.”), attached to the Weiner Dec. as Exhibit B, ¶ 2.)

BASIS FOR JURISDICTION

2. Basis for Jurisdiction in this Court. This Court has original jurisdiction over this action, and OMP, now known as OMJPI, may properly remove to this Court,

1 because the amount in controversy exceeds \$75,000, exclusive of interest and costs and
2 there is diversity of citizenship of all named parties. 28 U.S.C. §§ 1332, 1441(a).
3 Although McKesson is a resident of the forum, the forum defendant rule does not prevent
4 this Court from taking jurisdiction of this action. *Lively v. Wild Oats Markets, Inc.*, 456
5 F.3d 933 (9th Cir. 2006) (holding that forum defendant rule limitation on diversity-based
6 removal jurisdiction is a procedural, or non-jurisdictional, rule). Further, because
7 McKesson was fraudulently joined, that rule should not apply.

8 a. Amount in Controversy. Pursuant to California Code of Civil
9 Procedure Section 425.10(b), the amount of damages sought by plaintiff is not stated in
10 the Complaint. However, plaintiff claims that she “suffered and/or may continue to
11 suffer potentially fatal side effects such as strokes, pulmonary emboli, blood clots, deep
12 vein thrombosis, and heart attacks” from using Ortho Evra®. (Complaint ¶ 1; *see also* ¶
13 39, alleging that plaintiff “suffered from strokes, pulmonary emboli, blood clots, deep
14 vein thrombosis, and heart attacks, as well as other severe permanent health problems.”)
15 Plaintiff further alleges that OMP, now known as OMJPI, engaged in “fraudulent” and
16 “reckless” conduct, giving rise to punitive damages claims. (*See e.g.* Complaint ¶¶ 51D,
17 65, 75, 90, 104.)

18 Given the nature of plaintiff’s claims, and a review of damages awards and
19 settlement amounts in this judicial district, in cases involving allegations of serious
20 injuries from the use of prescription drugs or medical devices, it is reasonably believed
21 that, if plaintiff succeeded in proving the allegations of the Complaint, she would recover
22 a minimum of \$75,000 in damages. (Weiner Dec. ¶ 10.) Indeed, plaintiffs claiming
23 substantially similar injuries in the Ortho Evra® MDL have specifically alleged that the
24 amount in controversy in their respective actions exceeds \$75,000, exclusive of interest
25 and costs. (*Id.*)

26 It is therefore “facially apparent” from the nature of the claims alleged and the
27 types of damages sought that the amount in controversy in this action exceeds \$75,000,
28 exclusive of interest and costs. *See White v. FCI USA, Inc.*, 319 F.3d 672, 674 (5th Cir.

2003) (it was “facially apparent” that claim exceeded \$75,000 based on plaintiff’s “lengthy list of compensatory and punitive damages”); *see also In re Rezulin Products Liability Litigation*, 133 F.Supp.2d 272, 296 (S.D.N.Y. 2001) (concluding that complaint “obviously asserts a claim exceeding \$75,000” where plaintiff seeks “compensatory and punitive damages” for alleged “serious and life-threatening medical conditions” due to use of prescription medicine); *International Padi, Inc. v. Diverlink*, 2005 WL 1635347, *1 (9th Cir. Cal. 2005) (court considered plaintiffs’ general allegations of unspecified general and special damages “reasonably believed to be in excess of the jurisdictional limits” of the trial court and their request for injunctive relief to “easily conclude” that the \$75,000 amount in controversy requirement was met).

b. Citizenship of the Parties. There is complete diversity of citizenship between the parties, pursuant to 28 U.S.C. Section 1332. As alleged in the Complaint, plaintiff is a citizen of Indiana. (Complaint ¶ 10.) At the time the state court action was filed, OMP was a corporation existing under the laws of the State of Delaware, with its principal place of business in New Jersey, and is now known as OMJPI, a corporation existing under the laws of the State of Pennsylvania, with its principal place of business also in New Jersey, and McKesson was and is a corporation existing under the laws of the State of Delaware, with its principal place of business in California. (Weiner Dec. ¶¶ 3, 4; Yonko Dec. ¶ 2.)

c. Forum Resident Defendant McKesson has been Fraudulently Joined. Given that the forum defendant rule is procedural – and not jurisdictional – the fact that McKesson has its principal place of business in San Francisco does not prevent removal of this action. *See, Wild Oats, supra*. Further, the Court should disregard the rule, as plaintiff fraudulently joined McKesson as a “sham” defendant, solely in an effort to invoke the rule and to prevent OMP, now known as OMJPI, from removing the action to federal court and then transferring it to the Ortho Evra® MDL.

A defendant is fraudulently joined if “the plaintiff fails to state a cause of action against the defendant, and the failure is obvious according to the settled rules of the

1 state.” *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001). “When
 2 determining whether a defendant is fraudulently joined, “[t]he court may pierce the
 3 pleadings, consider the entire record, and determine the basis of joinder by any means
 4 available.” *Maffei v. Allstate California Ins. Co.*, 412 F.Supp.2d 1049 (E.D.Cal. 2006),
 5 citing *Lewis v. Time, Inc.*, 83 F.R.D. 455 (E.D.Cal. 1979) (“it is well settled that upon
 6 allegations of fraudulent joinder ... federal courts may look beyond the pleadings to
 7 determine if the joinder ... is a sham or fraudulent device to prevent removal”). If
 8 revealed that the joinder is fraudulent, the Court may dismiss the sham defendant.
 9 *Maffei, supra*. McKesson is so fraudulently joined here.

10 McKesson is fraudulently joined because plaintiff has not made any material
 11 allegations against it. *See e.g. Brown v. Allstate Insurance*, 17 F.Supp.2d 1134, 1137
 12 (S.D.Cal. 1998) (finding in-state defendants fraudulently joined where “no material
 13 allegations” against those defendants were made). Here, as demonstrated by the
 14 Complaint, plaintiff’s claims are substantively directed against the manufacturer of Ortho
 15 Evra® – OMP, now known as OMJPI, and not at McKesson. Indeed, none of plaintiff’s
 16 factual allegations, on which all of her causes of action are based, involve McKesson.
 17 (*See* “General Allegations” at Complaint ¶¶ 24-39.) Specifically, plaintiff claims that:
 18 OMP obtained FDA approval of Ortho Evra®, despite concerns about its safety; OMP
 19 failed to appropriately warn users and prescribing health care providers of the alleged
 20 serious risks of using Ortho Evra®; OMP failed to properly or adequately investigate
 21 safety concerns about Ortho Evra®; OMP’s conduct fell below the duty of care that it
 22 allegedly owed to plaintiff; OMP misrepresented the known risks associated with Ortho
 23 Evra®; OMP negligently and recklessly failed to inform the public and prescribing health
 24 care providers of the alleged risks of using Ortho Evra®; and OMP was careless and
 25 negligent in its manufacturing, testing, selling, distributing, merchandising, advertising,
 26 promoting, packaging, and marketing of Ortho Evra®.¹ (*Id.*) Those allegations have

27
 28 ¹ As detailed in its Answer, filed simultaneously with this Removal, OMP, now known as OMJPI,

1 everything to do with the claimed acts and omissions of OMP, now known as OMJPI,
2 and nothing to do with McKesson.

3 The only factual allegations that do relate to McKesson fail to state a claim against
4 that defendant. Plaintiff alleges that McKesson “distributed and sold Ortho Evra in and
5 throughout the State of California,” and that McKesson “packaged, distributed, supplied,
6 sold, placed into the stream of commerce, labeled, described, marketed, advertised,
7 promoted and purported to warn or to inform users regarding the risks pertaining to, and
8 assuaged concerns about the pharmaceutical Ortho Evra.” (Complaint ¶¶ 3, 19.) Notably
9 absent is any allegation that plaintiff falls within the general class of “users” referenced
10 by her conclusory allegations. Even more telling, plaintiff does not allege that McKesson
11 distributed or sold Ortho Evra® to her or to any of her respective health care providers or
12 pharmacists. (*See* Complaint.) Further, the Complaint lacks any allegation that
13 McKesson sold or distributed Ortho Evra® outside the State of California or more
14 specifically in Indiana, where plaintiff resides. The absence of such allegations compels
15 the conclusion that plaintiff fraudulently joined McKesson in an attempt to prevent
16 removal of this action to federal court. *See e.g. Lyons v. American Tobacco Co.*, 1997
17 WL 809677 at *5 (S.D. Ala. 1997) (holding that there is “no better admission of
18 fraudulent joinder” than the failure of plaintiff “to set forth any specific factual
19 allegations” against the joined defendant).

20 In short, plaintiff fails to allege that she received Ortho Evra® sold or distributed
21 by McKesson, a prerequisite to her product liability claims. It is essential that a plaintiff
22 who claims that a product distributed by defendant was defective must prove that
23 defendant was the distributor. *Garcia v. Joseph Vince Co.*, 84 Cal.App.3d 868, 874
24 (1978) (“Regardless of the theory which liability is predicated upon ... it is obvious that to
25 hold a producer, manufacturer, or seller liable for injury caused by a particular product,
26 there must first be proof that the defendant produced, manufactured, sold, or was in some
27 _____
28 denies plaintiff’s allegations and denies that it is liable to plaintiff in any manner or sum whatsoever.

1 way responsible for the product”). Notwithstanding, given that the crux of plaintiff’s
 2 claims is an alleged failure to warn of the alleged risks of using Ortho Evra®, there is no
 3 legal basis for the causes of action asserted against McKesson.

4 Under California law, McKesson bears no duty to warn. Rather, the “learned
 5 intermediary doctrine” provides that the duty to warn of a drug’s risk runs from the
 6 manufacturer to the physician, and then from the physician to the patient. *See Brown v.*
 7 *Superior Court (Abbott Labs.)*, 44 Cal.3d 1049, 1061-62, n.9 (1988); *Carlin v. Superior*
 8 *Court (Upjohn Co.)*, 13 Cal.4th 1104, 1116 (1996). The rationale of the learned
 9 intermediary doctrine is that the physician is in the best position to determine whether a
 10 patient should use a prescription drug, and imposing a duty to warn on others would
 11 threaten to undermine reliance on the physician’s informed judgment. For this reason,
 12 California courts have rejected imposing liability on distributors, including specifically
 13 McKesson, for failure to warn of the risks of using a prescription drug. *See e.g. Barlow*
 14 *v. Warner-Lambert Co.*, Case No. CV-03-1647-R(RZx), Slip Op. at 2 (C.D.Cal. April 28,
 15 2003) (attached as Ex. C to Weiner Dec.) (“the Court finds that there is no possibility that
 16 plaintiffs could prove a cause of action against McKesson, an entity which distributed
 17 [the prescription medication at issue] to pharmacists in California;” motion to remand
 18 denied); and *Skinner v. Warner-Lambert Co.*, Case No. CV-03-1643-R(RZx), Slip Op. at
 19 2 (C.D.Cal. April 28, 2003) (attached as Ex. D to Weiner Dec.) (same).

20 Further, McKesson had no involvement in the development or preparation of the
 21 prescribing information for Ortho Evra® and did not have any responsibility for the
 22 content of other written warnings concerning Ortho Evra®. (Yonko Dec. ¶ 5.) At no
 23 time has McKesson had any involvement with the manufacture, development, testing,
 24 packaging, labeling, advertising, promotion, or marketing of Ortho Evra®. (*Id.* ¶¶ 6-7.)

25 It is therefore a mystery why McKesson is named in this case, other than as a
 26 “sham” defendant to prevent OMP, now known as OMJPI, from removing the action to
 27 federal court and then transferring it to the Ortho Evra® MDL. Courts have consistently
 28 ruled that such collusive tactics are not to be recognized. *See e.g. Attorneys Trust v.*

Videotape Computer Products, Inc., 93 F.3d 593 (9th Cir. 1996) (noting there is no more reason for federal courts to countenance destruction of jurisdiction by the use of straw parties than there is for them to countenance the creation of jurisdiction in that manner); *Grassi v. Ciba-Geigy, Ltd.*, 894 F.2d 181, 185 (5th Cir. 1990), *citing* American Law Institute, Study of the Division of Jurisdiction Between State and Federal Courts, Official Draft, at 169 (1969) ("Removal based on diversity of citizenship is a right conferred by Congress, the need for which 'may well be greatest when the plaintiff tries hardest to defeat it.'").

d. Citizenship of Doe Defendants. Pursuant to 28 U.S.C. Section 1441(a), for purposes of removal, the citizenship of defendants Does 1-500 must be disregarded because plaintiff sued those defendants under fictitious names.

REMOVAL TIMELY FILED

3. Service was made on the registered agent for service of process of OMP, now known as OMJPI, on March 21, 2008. (Weiner Dec. ¶ 3.) McKesson was served, via its registered agent, on March 24, 2008. (*Id.* ¶ 4.) Therefore, this Removal was timely filed within 30 days of service, pursuant to 28 U.S.C. § 1446(b).

CONSENT TO REMOVAL

4. The only other named defendant, McKesson, was fraudulently joined, and its consent is therefore not required for removal; notwithstanding, McKesson consents to the removal by OMP, now known as OMJPI, of this action to this Court. (Weiner Dec. ¶ 4.)

STATE COURT WITHIN THE COURT'S JURISDICTION

5. The San Francisco County, California Superior Court, from which OMP, now known as OMJPI, removes this action, is within this Court's jurisdiction.

STATE COURT PLEADINGS

6. Copies of the state court pleadings known to OMP, now known as OMJPI, to have been filed in this action are collectively attached to the Weiner Dec. as Exhibit A.

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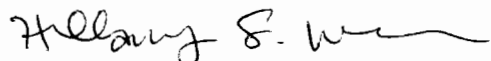
FILING AND SERVICE OF NOTICE OF REMOVAL AND REMOVAL

7. OMP, now known as OMJPI, will file a notice of the filing of this Notice of Removal and Removal in the San Francisco County Superior Court and will serve plaintiff's counsel with a copy. (Weiner Dec. ¶ 5.)

WHEREFORE, OMP, now known as OMJPI, hereby removes to this Court San Francisco County Superior Court Case No. CGC-07-469227.

Dated: April 16, 2008

DRINKER BIDDLE & REATH


CHARLES F. PREUSS
HILLARY S. WEINER

Attorneys for Defendants
ORTHO-MCNEIL PHARMACEUTICAL,
INC., now known as ORTHO-McNEIL-
JANSSEN PHARMACEUTICALS, INC.,
and MCKESSON CORPORATION